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International Court of Justice

H3155 - 0002

OFFICE OF CHIEF OF COUNSEL FOR WAR CRIMES

EVIDENCE DIVISION

Date : 21 July 1948

I certify that Document Number 3261-PS was introduced into evidence as Exhibit Number USA-568 in the Trial by the International Military Tribunal of Hermann GOERING, et al, which commenced on 20 November 1945, and that the attached photostat is a true and correct copy of the original.

Fred Niebergall

Fred NIEBERGALL
Chief, Document
Control Branch.

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C E R T I F I C A T E

I hereby certify that the annexed document 3261-PS No. USA-568 is a photostat of an original document submitted in evidence by the United States Prosecution under this number. The original document has been withdrawn in accordance with Rule 10 of the International Military Tribunal, and to the best of my knowledge and belief is to be held at the National Archives, Washington D.C. .

Paul Joosten

PAUL A. JOOSTEN

General Secretary
International Military
Tribunal

Nuremberg, 1 July 1948

SEGRETERIA DI STATO
DI SVA SANTITA

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THE VATICAN, November 13th 1945.

I, D o m e n i c o T a r d i n i, Secretary of Extraordinary Ecclesiastical Affairs, hereby certify that the attached document consisting of 9 printed pages and entitled:

"Verbal note of the Secretariate of State of His Holiness to the German Embassy (Jan. 18th 1942)" (pp.3-11)

is a true and correct translation into the English language from the Italian language of a carbon copy of a document now in the possession of the Secretariate of State of His Holiness, the original of which was dispatched to the German Embassy.

Domenico Tardini

INTERNATIONAL MILITARY TRIBUNAL
NUREMBERG, GERMANY
USA Exhibit 568
Filed Jan 7, 1946

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Verbal note of the Secretariate of State of His Holiness to the German Embassy (Jan. 18th 1942)

This is the answer to the German Embassy's Verbal Note, *dated August 29th 1941. The document sets forth the grave reasons of right and fact because of which the Holy See cannot agree to the requests put forward by the Government of the Reich about episcopal nominations.*

The Secretariate of State of His Holiness has the honour to acknowledge the receipt from the honourable German Embassy to the Holy See of the Verbal Note of August 29th 1941.

In that Verbal Note the honourable German Embassy communicated to the Secretariate of State that " in view of the importance that attaches to the conferring of all the high offices of the Roman Catholic Church, the Government of the Reich cannot renounce the right to be heard before such offices are conferred; a right which belongs to it in virtue of its sovereignty".

It noted further that the Government "must, on the contrary, attach importance to its being given the possibility of having its difficulties of a general political character heard before the conferring of the offices of Archbishop, Bishop, Coadjutor with the right of succession and also of independent Prelate (Praelatus Nullius) in the entire new territory of the Reich, together with Alsace, Lorraine, Luxemburg and the freed territories of Lower Steyer, Kärnten and Krain and also in the General Government area (Generalgouvernement). Moreover the Government must claim this right also in cases where the administration of the abovementioned ecclesiastical offices is to be in the hands of an Apostolic Administrator, or of a Vicar Capitular beyond a reasonable time or finally of any other diocesan administrator whatsoever".

At the same time the honourable German Embassy notified

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the Secretariate of State that " in the interest of uniformity in administration throughout the entire sovereign territory of the Reich, the Government must further attach importance to the fact that, within the old territory of the Reich also, the appointment of ecclesiastical dignitaries of the kind just mentioned (Apostolic Administrators, Vicars Capitular and other diocesan administrators) be not made unless the Government has been approached beforehand confidentially, and given the opportunity to submit for consideration any difficulties of a general political character it may at the time have against the proposed candidates ".

" The Government of the Reich ", the Verbal Note concludes, " therefore asks the Holy See before conferring in future any Ecclesiastical offices of the kind mentioned above, to afford it, by means of an appropriate communication, the opportunity to submit for consideration any possible difficulties of a general political character ".

In this connexion the Secretariate of State is anxious above all to assure the honourable German Embassy that the Holy See, animated as it is by the liveliest desire to secure, as far as it is concerned, the genuine welfare of the German people, has been and is still sincerely disposed to do everything that it can, within the range of its rights and obligations, to improve the relations between the Church and the German State.

Of this disposition (not to mention many other noteworthy instances) the Holy Father gave a particularly solemn proof immediately after his accession to the Pontifical Throne in the autograph letter, dated March 6th 1939, to His Excellency the Führer and Chancellor of the Reich.

In that letter His Holiness stated, among other things: " Recalling with pleasure the long years during which, as Apostolic Nuncio in Germany, We glady devoted all Our efforts to have the relations between Church and State regulated and to make them more and more friendly through mutual understanding and ready cooperation, for the good of both parties, We now direct especially to the achievement of such an end the fulness of the most ardent

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desires, which are inspired and made possible by the responsability of Our office".

Yet, despite this keen desire of the August Pontiff, which His Excellency the Führer and Chancellor of the Reich, in his reply of the following April 29th, said that he shared, the relations between Church and State in Germany are still far indeed from being what they ought to be, as alas is made manifest by the measures and acts which continue to multiply both in the territory of the Reich and in the occupied and annexed countries, measures and acts which gravely violate the rights of the Church, being contrary not only to the existing Concordats and to the principles of international law ratified by the Second Hague Conference, but often - and this is much more grave - to the very fundamental principles of divine law, both natural and positive.

Let it suffice to recall in this connection, among other things, the changing of the Catholic State elementary schools into undenominational schools; the permanent or temporary closing of many minor seminaries, of not a few major seminaries and of some theological faculties; the suppression of almost all the private schools and of numerous Catholic boarding schools and colleges; the repudiation, decided unilaterally, of financial obligations which the State, Municipalities, etc. had towards the Church; the increasing difficulties put in the way of the activity of the religious Orders and Congregations in the spiritual, cultural and social field and above all the suppression of Abbeys, monasteries, convents and religious houses in such great numbers that one is led to infer a deliberate intention of rendering impossible the very existence of the Orders and Congregations in Germany.

Similar and even graver acts must be deplored in the annexed and occupied territories, especially in the Polish territories and particularly in the Reichsgau Wartheland for which the Reich Superintendent has issued, under date of September 13th last, a "Decree concerning Religious Associations and Religious Societies" (Verordnung über religiöse Vereinigungen und Religiongesell-

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schaften) in clear opposition to the fundamental principles of the divine constitution of the Church.

If all this has been and still is reason for profound regret on the part of the Holy See—a regret that is equally shared by the Catholics of Germany and of the entire world—it has not however availed to cool the ardent desire to see the Catholic religion restored to a satisfactory position in the Reich and in the territories dependent on it, through a betterment of the relations between the Holy See and the Government.

As to what concerns the wishes expressed by the Government of the Reich with regard to the filling of the high offices of the Catholic Church, the Secretariate of State cannot but agree with the Government as to the importance attaching to appointments to all these high offices.

In fact the person appointed to govern a diocese in fulfilling his spiritual mission, naturally comes to defend and encourage those same principles of virtue, order, discipline and social justice by which the State wishes the conduct of its citizens to be guided.

The fact however that the choice of a candidate for such an office contributes also to the good of the State and for that very reason has an interest for the Government, does not suffice to give the Government a right to intervene in any way in the choice itself, any more than the fact that the appointment of an upright, just, dispassionate State official, not hostile to the Church, has a particular importance for the religious authorities, does not confer on them the right to intervene in the appointment itself.

The Secretariate of State, moreover, takes the liberty to remind the honourable German Embassy that the Church, founded by Christ and hence existing by divine right, directed towards the achievement of supernatural ends assigned exclusively to her, for the attainment of which she is—in virtue of her divine constitution—provided with adequate means, is a perfect juridical society and, in her own order, supreme.

It possesses consequently a sphere of action which is exclusively its own, and within which it acts in complete independence.

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Hence it follows that with regard to the Church's procedure in general and in particular with regard to her internal government and especially her choice of those who are to preside over it, the State cannot invoke or ask to have considered rights deriving from the sovereignty which undoubtedly belongs to it in its own order but which cannot but be restricted to its sphere of civil and political action.

This right of the Church to provide, in complete independence of the civil power, for the government of ecclesiastical provinces is confirmed by the fact that in those Nations in which no special agreements are in force between the Holy See and the Governments these do not intervene in any way in appointments to dioceses, nor do they receive previous notification of such appointments even though, as in the case of Brazil, Chile and Ireland for example, they have full diplomatic relations with the Holy See.

If then some Governments, including that of Germany, enjoy special privileges even regarding episcopal appointments, this does not establish a native right of the civil authorities, but depends solely, as is well known, upon special agreements, in virtue of which the Holy See, precisely because of its supreme power in the ecclesiastical sphere (a power, moreover, that is acknowledged by the State which enters on such a solemn international pact with the Holy See) has made certain concessions, confining them always within clear and determined limits. And so true is it that for Germany, too, such a privilege is a concession of the Holy See, that both in the Concordat with the Reich and in that with Bavaria, before the privilege is conceded, an affirmation of principle is made about the Church's right to choose freely her holy Pastors.

In fact, in the Concordat with the Reich, in art. 14 it is stated: "The Catholic Church has in principle the right to confer freely all ecclesiastical offices and benefices, without the State or municipalities intervening ... Before the Bulls are despatched for the appointment of Archbishops, of Bishops, of a Coadjutor with the right of succession or of a Prelate Nullius, notice will be given to the Reich Lieutenant in the State concerned of the name of

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the person chosen to make sure that no objections of a general political character exist against him".

In the Concordat with Bavaria, in art. 14 it is laid down: "The appointment of Archbishops and Bishops is the concern of the Holy See acting in full liberty. Before publishing the Bull, the Holy See will approach the Bavarian Government confidentially and make sure that there are no objections of a political order against the candidate".

It is always in virtue of a concession founded on a Concordat that other States of Germany enjoy a like privilege.

So in the Concordat with Prussia, in art. 6, 1 it is laid down: "The Holy See will not appoint any Archbishop or Bishop, without the Chapter after the election having first made sure from the Prussian Government that no objections of a political character exist against him". And in art. 7: "The Holy See will not appoint any Prelate Nullius or Coadjutor of a diocesan Bishop with right of succession without having first ascertained from the Prussian Government that there do not exist objections of a political character".

In the Concordat with Baden, art. 3 lays down: "1. When the Archiepiscopal see falls vacant, the Chapter presents to the Holy See a list of canonically suitable candidates... 2. Before confirming the person elected, the Holy See will ascertain from the Ministry of State of Baden whether there exist against him on the part of the Government objections of a general political character, to the exclusion however of those regarding the political party". And in the final Protocol, concerning art. 3 it es laid down: "In the case of oppointing a Coadjutor with right of succession to the Archbishop of Freiburg, the Holy See will take action after having consulted the Government of Baden".

As the honourable German Embassy will observe, in the Concordat provisions quoted above—and such provisions are, moreover, analogous to those agreed upon with other States—the privilege allowing that objections of a political character against a candidate be taken into consideration—a pure concession founded

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on a Concordat is limited expressly to Archbishops, Bishops, Coadjutors with right of succession and Prelates Nullius.

In fact, prescinding from the choice of Vicars Capitular which is made directly by the respective Chapters in conformity with the dispositions of Canon Law and without the intervention of the Holy See, it is not the practice and custom of the Holy See to grant the above mentioned privilege in cases of the appointment of Apostolic Administrators or, should the case require, of other Prelates called to govern a diocese during an interim, its intention being to reserve to itself entire liberty in the filling of offices which are of their nature extraordinary and transitory.

If the duration of such offices happens at times to be prolonged, that is to be attributed solely to special circumstances, entirely independent of the will of the Holy See and for which it certainly cannot be held in any way responsible.

The Secretariate of State deems it unnecessary to represent to the honourable German Embassy that were the privilege granted to the Government of the Reich to have objections of a general political character considered with regard to the appointment, within the territory of the Reich, of Apostolic Administrators and of other persons appointed ad interim to the government of the various ecclesiastical provinces, the way would be opened, as one can easily see, to complaints on the part of the other Governments which, no less than the Government of the Reich, attach importance to the above-named appointments but to none of which a similar concession has been made, not excepting even those which by their favourable treatment of the Church have earned for themselves particular merits.

Moreover, as to the request for the privilege to have observations of a general political character taken into account even in the territories not comprised in the old Reich and indicated in the above-mentioned Memorandum, both as regards Bishops and in the instances in which the government of the ecclesiastical provinces is entrusted provisionally, " beyond a reasonable time " to an Apostolic Administrator or to a Vicar Capitular or in fine

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to any regent whatever, the Secretariate of State takes the liberty to remark that from what has been already said it follows that the concession of such a privilege would go against the noted traditional practice of the Holy See.

Eurthermore the Holy See holds as a norm and constant practice of law, of prudence and of respect, determined by the highest moral and juridical principles, not te proceed, whatever agreements or privileges be asked for by States, to innovations in the religious life of a country, in whatever way occupied or annexed in consequence of military operations, except when at the conclusion of hostilities the new conditions are formally recognized in the peace treaties or by the competent international organisms that may exist.

The Holy See held to this same practice during the last world war.

Thus, to quote some examples, notwithstanding the fact that the Bishops of Metz and Strasbourg, Germans by nationality, following on the occupation of Alsace-Lorraine by French troops, had offered their resignations, the Holy See did not accept them until July 10th 1919 and did not grant the canonical installation of the two French prelates, their successors, until the following July 31st, that is, when the peace treaty had already entered into force.

The Holy See acted in a similar manner in the question of the delimitation of the ecclesiastical provinces of Poland. Notwithstanding the wish expressed by the Polish Government and the importance, even in the very interests of Religion, of a quick solution, the Holy See abstained from taking a final decision in this matter until an international juridical settlement had been reached in the controversy relating to the possession of Vilna. It was only after the well-known decisions reached on this question by the Conference of Ambassadors (March 14th 1923) and by the League of Nations (December 3rd 1923) that the Holy See, in art. IX of the Polish Concordat, signed on February 10th 1925, established the new ecclesiastical division of Poland.

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Nor was there any difference in the procedure adopted in regard to other States that arose or were altered by reason of the treaties following the war of 1914-1918.

In consideration, therefore, of such reasons, the Holy See while remaining always disposed to meet, within the limits determined for it by its rights and obligations, the legitimate wishes of the German Government, to its keen regret does not find itself in a position to grant the requests contained in the above mentioned Verbal Note of August 29th last.

Begging the honourable German Embassy to bring the above to the knowledge of its Government, the Secretariate of State takes occasion, etc.

End

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